

### **304.42-050 Definitions for subtitle.**

As used in this subtitle:

- (1) "Account" means either of the three (3) accounts created under KRS 304.42-060.
- (2) "Association" means the Kentucky Life and Health Insurance Guaranty Association created under KRS 304.42-060.
- (3) "Authorized assessment" or the term "authorized" when used in the context of assessments means a resolution by the board of directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specific amount. An assessment is authorized when the resolution is passed.
- (4) "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.
- (5) "Called assessment" or the term "called" when used in the context of assessments means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.
- (6) "Executive director" means the executive director of insurance of this state.
- (7) "Contractual obligation" means any obligation under a policy or contract or a certificate under a group policy or contract, or portion thereof, for which coverage is provided under KRS 304.42-030.
- (8) "Covered policy" means any policy or contract or portion of a policy or contract for which coverage is provided under KRS 304.42-030.
- (9) "Extracontractual claims" include but are not limited to claims relating to bad faith in the payment of claims, punitive or exemplary damages, and attorneys' fees and costs.
- (10) "Impaired insurer" means a member insurer which, after June 17, 1978, is not an insolvent insurer and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.
- (11) "Insolvent insurer" means a member insurer which after June 17, 1978, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.
- (12) "Member insurer" means any insurer authorized to transact in this state any kind of insurance for which coverage is provided under KRS 304.42-030, and includes any insurer whose certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:
  - (a) A nonprofit hospital, medical-surgical, dental, and health service corporation, as defined by Subtitle 32 of this chapter;
  - (b) A health maintenance organization;
  - (c) A fraternal benefit society;
  - (d) A mandatory state pooling plan;

- (e) An assessment or cooperative insurer or any entity that operates on an assessment basis;
  - (f) An insurance exchange;
  - (g) Any entity similar to the above;
  - (h) Health insurance where such insurance is written by a member of the Kentucky Insurance Guaranty Association; or
  - (i) A limited health service organization.
- (13) "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's Investors Service, Inc., or any successor thereto.
- (14) "Owner" of a policy or contract and "policy owner" and "contract owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. The terms "owner," "contract owner," and "policy owner" do not include persons with a mere beneficial interest in a policy or contract.
- (15) "Premiums" means amounts or considerations, by whatever name called, received on covered policies or contracts less returned premiums, considerations, and deposits, and less dividends and experience credits. "Premiums" does not include amounts or considerations received for any policies or contracts or for the portions of policies or contracts for which coverage is not provided under KRS 304.42-030(2), except that assessable premium shall not be reduced on account of KRS 304.42-030(2)(b)3. Relative to interest limitations and KRS 304.42-030(3)(b) relating to limitations with respect to one (1) individual and one (1) contract owner. "Premiums" shall not include with respect to multiple nongroup policies of life insurance owned by one (1) owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of one million dollars (\$1,000,000) with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.
- (16) "Person" means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.
- (17) "Plan sponsor" means:
- (a) The employer in the case of a benefit plan established or maintained by a single employer;
  - (b) The employee organization in the case of a benefit plan established or maintained by an employee organization; or
  - (c) In a case of a benefit plan established or maintained by two (2) or more employers or jointly by one (1) or more employers and one (1) or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

- (18) (a) "Principal place of business" of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise the function, determined by the association in its reasonable judgment by considering the following factors:
1. The state in which the primary executive and administrative headquarters of the entity is located;
  2. The state in which the principal office of the chief executive officer of the entity is located;
  3. The state in which the board of directors or similar governing person or persons of the entity conducts the majority of its meetings;
  4. The state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings;
  5. The state from which the management of the overall operations of the entity is directed; and
  6. In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors.

However, in the case of a plan sponsor, if more than fifty percent (50%) of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.

- (b) The principal place of business of a plan sponsor of a benefit plan described in subsection (17)(c) of this section shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan or question.
- (19) "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.
- (20) "Resident" means any person to whom a contractual obligation is owed and who resides in this state on the date when a member insurer is determined to be an impaired or insolvent insurer, whichever occurs first. A person may be a resident of only one (1) state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States that are either residents of foreign countries or residents of United States possessions, territories, or protectorates that do not have an association similar to the association created by this subtitle shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts.

- (21) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.
- (22) "State" means a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.
- (23) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.
- (24) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 105, sec. 28, effective July 15, 2002. -- Amended 1998 Ky. Acts ch. 537, sec. 4, effective July 15, 1998. -- Amended 1988 Ky. Acts ch. 282, sec. 2, effective July 15, 1988. -- Created 1978 Ky. Acts ch. 282, sec. 5, effective June 17, 1978.

**Legislative Research Commission Note** (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.